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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,121	09/27/2001	Rick Braumoeller	249768060US	1774
500 7590 07/17/2007 SEED INTELLECTUAL PROPERTY LAW GROUP PLLC 701 FIFTH AVE SUITE 5400 SEATTLE, WA 98104			EXAMINER PLUCINSKI, JAMISUE A	
			ART UNIT 3629	PAPER NUMBER
			MAIL DATE 07/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/965,121	<b>Applicant(s)</b> BRAUMOELLER ET AL.	
	<b>Examiner</b> Jamisue A. Plucinski	<b>Art Unit</b> 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2,7-19,32-74 and 77-87 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,7-19,32-74 and 77-87 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>20021104, 20051209, 20070406</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Claims 2, 17-19 and 74 in the reply filed on 4/6/07 is acknowledged.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. With respect to Claim 8: the phrase "for each at least some of the determined fulfillment plans" is indefinite. The phrase appears to be contradicting itself, it is unclear to the examiner if this is done for each of the determined fulfillment plans or for at least some of the determined fulfillment plans.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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6. Claims 1, 2, 7-11, 13, 14, 16-19, 32-42, 44-48, 50-74 and 77-87 are rejected under 35 U.S.C. 102(e) as being anticipated by Bilibin et al. (US 2005/0197892).

7. With respect to Claims 1, 16, 32, 33, 35, 36, 53-55, 58, 59, 62, 63, 67, 72, 77-80, 82: Bilibin discloses a method, a computing device and a medium configured to perform a method for an item ordering service to present actual delivery date information to a customer at time of order placement for each of multiple fulfillment plan options available for use in fulfilling the order (see abstract, and Figure 17 with corresponding detailed description, Bilibin discloses the system can be used by a seller when selling an item, the customer will receive the shipping options of Bilibin, the examiner considers the shipping options to be a form of a delivery fulfillment plan, due to the fact that the shipping options take into affect origin location, destination location, and calculate date and cost of getting the item from the seller to the receiver), the method comprising, upon receiving an indication from a customer of one or more items for delivery to a recipient:

- a. determining multiple distinct fulfillment plans for supplying the items to the recipient (Paragraphs 0229 and 0238), each fulfillment plan indicating a geographical location of the item and a manner of shipping the item from the geographic location (Paragraphs 0233 and 0310);
- b. determining a cost of use for each fulfillment plan (Paragraph 0238);
- c. determining an actual time and delivery date each fulfillment plan (Paragraphs 0218 and 0221, 0303);
- d. providing to the customer an indication of each of multiple of the determined fulfillment plans as options for supplying the items to the recipient (Paragraphs 0229 and

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0238) including the cost and delivery date/time of each fulfillment plan (Paragraph 0218 and 0221); and

e. after an indication from the customer to use a selected one of the indicated determined fulfillment plan options, placing an order for the items to be delivered to the recipient using the selected fulfillment plan (0349).

8. With respect to Claims 2, 17 and 64: Bilibin discloses the received indication of the items represents a potential order for those items (Bilibin discloses the buyer is browsing the sellers site, therefore considered to be a potential order), and wherein the providing to the customer of the fulfillment plans is performed before an indication to initiate an ordering process for the items is received from the customer (Paragraph 0253).

9. With respect to Claims 7, 19, 65 and 84: Bilibin discloses the item order service is a Web-based service where the fulfillment plans are provided using a Web page (Paragraphs 0229 and 0253).

10. With respect to Claim 8: Bilibin discloses the fulfillment plans describes how that fulfillment plan will be performed (Paragraph 0303).

11. With respect to Claims 9, 10, 48 and 68: Bilibin discloses the use of default settings based on the sellers preferences (Paragraphs 0204, 0207 and 0292).

12. With respect to Claim 11: Bilibin discloses that each fulfillment plan is consistent with the preferred ordering instructions (Paragraphs 0164, 0166 and 0233).

13. With respect to Claim 13: Bilibin discloses the use of a determined date with each fulfillment plan (Paragraph 0218 and 0221).

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14. With respect to Claims 14, 40 and 41: Bilibin discloses the determining of the cost of use for a fulfillment plan includes:

- f. modeling at least some future costs of supplying expected future orders to recipients if the indicated items are supplied to the recipient using the fulfillment plan (Paragraph 0287 shipping cost, the examiner considers them to be future cost, cause the item has not been purchased yet);
- g. determining at least some of multiple costs that are directly attributable to using the fulfillment plan to supply the items to the recipient (Paragraph 0287);
- h. assigning costs to at least some of one or more reductions in customer goodwill that result from using the fulfillment plan to supply the items to the recipient (Paragraph 0295, see discounts); and
- i. totaling the modeled future costs, the determined directly attributable costs, and the assigned customer goodwill reduction costs (Paragraph 0295).

15. With respect to Claim 18: Bilibin discloses the fulfillment plans are provided to initiate ordering process (Paragraph 0253).

16. With respect to Claims 34, 66, 71 and 83: Bilibin discloses the use of selectable display controls for the selection of other delivery fulfillment plans (See Graphic Arrays, Paragraph 0238).

17. With respect to Claims 37 and 39: Bilibin discloses the cost includes cost of the fulfillment plans (Paragraph 0287).

18. With respect to Claim 38: Bilibin discloses the cost is based on the supplier supplying the item using the selected delivery plan (0287).

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19. With respect to Claim 42: Bilibin discloses the displaying delivery options (Paragraph 0206).
20. With respect to Claim 44: Bilibin discloses the fulfillment plans include the manner of acquiring the items (0157).
21. With respect to Claim 45: Bilibin discloses the use of an indication of priority of the items (Paragraph 0456).
22. With respect to Claims 46 and 61: Bilibin discloses the delivery fulfillment plans include manner of processing items at the delivery center (Paragraph 0157).
23. With respect to Claim 47: Bilibin discloses the fulfillment plans are based on ordering instructions (Paragraphs 0164, 0166 and 0233).
24. With respect to Claim 50: Paragraph discloses the transporting is shipping of the items (see abstract).
25. With respect to Claim 51: Bilibin discloses the transporting of the items is physically moving the items (see abstract).
26. With respect to Claim 52: Bilibin discloses the delivery time is the future date it is going to be received (Paragraphs 0259-0261).
27. With respect to Claims 56, 60 and 87: Bilibin discloses the medium is memory in a computer device (Paragraph 0122).
28. With respect to Claims 57 and 86: Bilibin discloses the medium is data transmission of a data signal (Paragraph 0173).

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29. With respect to Claims 69 and 70: Bilibin discloses sending information on actual fulfillment to customer, after order is placed and prior to item being received (Paragraphs 0405-0406).
30. With respect to Claim 73: Bilibin discloses the indication of the deliver fulfillment plans includes an actual effect that will result from using the particular delivery option (The examiner considers the delivery time and date to be the effect of the particular delivery option).
31. With respect to Claim 74: Bilibin discloses that the provisional date is the delivery date (Paragraphs 0218 and 0221).
32. With respect to Claim 81: Bilibin discloses the fulfillment plans include, distribution center, manner of transporting, processing lanes, or manner of processing (Paragraphs 0157, 0233 and 0303).
33. With respect to Claim 85: Bilibin discloses the use of a multi-dimensional array (Paragraphs 0238).

***Claim Rejections - 35 USC § 103***

34. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

35. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any



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evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

36. Claims 12, 15, 43 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bilibin et al. (US 2005/0197892).

37. With respect to Claims 12 and 49: The examiner takes official notice that it is old and well known in the art when e-shopping, when shipping an item, the customer is commonly the default recipient. This happens commonly when a website will ask if the item is a gift, if the box is not checked then the item is for the recipient. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the customer or buyer, be the default recipient, due to the fact that the majority of shopping is done for personal use, as opposed to gifts for others.

38. With respect to Claims 15 and 43: Bilibin discloses the use of fulfillment plans, however fail to disclose the fulfillment plans including processing lanes. However, the information in the fulfillment plan including processing lanes is deemed to be nonfunctional descriptive material and is not functionally involved in the steps recited. The steps of providing the delivery fulfillment plans and indicating the fulfillment plans, would be performed the same regardless of whether the plans included the processing lanes due to the fact that no further steps use the information on the processing lanes for any other reason. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*,

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703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed.Cir.1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

### ***Conclusion***

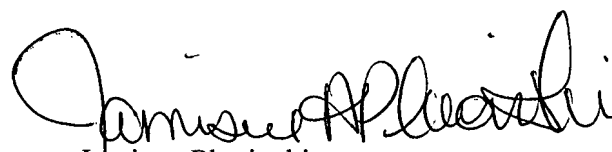
39. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Weber et al. (US 2002/0156663) disclose the use of a shipping optimization method, Hileman (US 2007/0073552) discloses the use of an on-demand transportation system where multiple fulfillment plans are displayed to the customer, Shinagawa et al. (5,897,629) discloses the use of an apparatus for transportation optimization.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Plucinski whose telephone number is (571) 272-6811. The examiner can normally be reached on M-Th (5:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "Jamisue Plucinski". The signature is fluid and cursive, with a large initial "J" and "P".

Jamisue Plucinski  
Primary Examiner  
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